# STATE OF MICHIGAN

# COURT OF APPEALS

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DARREN FINDLING, Successor Personal Representative of the Estate of MICHAEL T. WALLS, Deceased,

Plaintiff/Counterdefendant-Appellant,

v

DARRELL CORTEZ MCCLOUD, JR.,

Defendant/Cross-defendant,

and

CHASE MANHATTAN MORTGAGE CORPORATION,

Defendant/Counterplaintiff/Cross-plaintiff/Third-Party Plaintiff-Appellee,

and

KENNETH SIEBERT and WASHINGTON INTERNATIONAL INSURANCE COMPANY,

Defendants/Cross-defendants,

and

JULIA CHANDLER,

Third-Party Defendant.

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UNPUBLISHED
September 20, 2005

No. 261826
Wayne Circuit Court
LC No. 04-411275-CH

Before: Fitzgerald, P.J., and Cooper and Kelly, J.J.

PER CURIAM.

This case arises from an action to quiet title to property ("the property"), which was purportedly transferred from Michael T. Walls to Julia Chandler by a quitclaim deed dated September 3, 1997 ("1997 quitclaim deed"). Plaintiff appeals as of right the trial court's order denying his motion for summary disposition and granting defendant Chase Manhattan Mortgage Corporation's cross-motion for summary disposition. We affirm.

Plaintiff first argues that the trial court erred in granting defendant Chase Manhattan's cross-motion for summary disposition because there was sufficient evidence to support his claim that the purported signature of Walls on the 1997 quitclaim deed was a forgery. We disagree.

We review de novo trial court's decision on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Morales v Auto Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion for summary disposition pursuant to MCR 2.116(C)(10) may be granted when the affidavits or other proofs show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

At her deposition, Chandler testified that she had never seen the 1997 quitclaim deed and that the blank paper on which she signed Walls' signature was presented by the household repairman in the winter of 2001. Chandler's deposition testimony directly contradicted her affidavit, in which she attested that she forged Walls' signature on the 1997 quitclaim deed. In light of Chandler's contradictory deposition testimony, plaintiff may not rely on Chandler's affidavit to establish the existence of a genuine issue of material fact regarding the issue of forgery. *Dykes v William Beaumont Hosp*, 246 Mich App 471, 479-480; 633 NW2d 440 (2001). Viewing the evidence in the light most favorable to plaintiff, we conclude that no genuine issue of material fact was shown with respect to plaintiff's claim that Chandler forged Walls' signature on the 1997 quitclaim deed or that the blank paper on which Chandler allegedly forged Walls' signature in the winter of 2001 was later altered into the 1997 quitclaim deed. The trial court did not err in granting summary disposition in favor of defendant Chase Manhattan.

Plaintiff also argues that the trial court erred in denying his motion for summary disposition because defendant failed to present any evidence that contradicts Chandler's admission of forgery on the 1997 quitclaim deed or a blank piece of paper that later became the 1997 quitclaim deed. We disagree.

Because this issue was raised in plaintiff's motion for summary disposition, plaintiff, not defendant, had the initial burden of supporting his position with admissible evidence. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999), quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996). The 1997 quitclaim deed was signed by a notary public and two witnesses as well as Walls. There is a statutory presumption that the facts contained in a document to which a notary public's seal was affixed are true. MCL 55.113; *Settles v Detroit City Clerk*, 169 Mich App 797, 806; 427 NW2d 188 (1988). This presumption is rebutted by presenting "clear, positive and credible evidence in opposition." *Vriesman v Ross*, 9 Mich App 102, 106; 155 NW2d 857 (1967), citing *Garrigan v LaSalle Coca-Cola Bottling Co*, 362 Mich 262; 106 NW2d 807 (1961). As discussed above, Chandler's deposition testimony, which directly contradicted her affidavit, did not establish that Chandler forged Walls' signature

on the 1997 quitclaim deed. Plaintiff did not present any other evidence to overcome the presumption that the 1997 quitclaim deed was genuine. Plaintiff had no other basis to challenge defendant Chase Manhattan's interest in the property.[1] The trial court properly denied plaintiff's motion for summary disposition.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly

[1] Plaintiff's other arguments that Chandler, as Walls' common-law wife and the temporary personal representative of the estate of Walls, had no legal authority to convey the property and that defendant Chase Manhattan has no valid interest in the property are based on his allegation that the 1997 quitclaim deed was a forgery. However, because plaintiff failed to present any evidence to factually support his allegation, the trial court did not err in denying plaintiff's motion for summary disposition.